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No. , Original

Supreme Court of the United States

OCTOBER TERM, 1953

STATE OF ALABAMA, *Complainant*,

v.

STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS MCKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST, *Defendants*.

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

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September 26, 1953.

INDEX

CITATIONS

Cases:

Miscellaneous:

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BRIEF FOR COMPLAINANT

JURISDICTION

This is an action by the State of Alabama against the State of Texas, the State of Louisiana, the State of Florida, the State of California, and George M. Humphrey, a citizen of the State of Ohio, Douglas McKay, a citizen of the State of Oregon, Robert B. Anderson, a citizen of the State of Texas, and Ivy Baker Priest, a citizen of the State of Utah. It is proposed to be instituted in this Court under authority of Article III, Section 2, Clauses 1 and 2 of the Constitution of the United States and Title 28, United States Code, Section 1251.

QUESTIONS PRESENTED

1. Is Public Law 31, 83d Cong., 1st Sess., c. 65, which purports to authorize the assertions by the defendant states of ownership, dominion and power and exclusive jurisdiction and control of the lands, minerals, marine animal and plant life and other natural resources lying seaward of the ordinary low water mark off their coasts and outside of inland waters, a valid exercise of the trust upon which the United States holds its interest in these lands and resources under the Constitution?

2. Is Public Law 31, 83d Cong., 1st Sess., c. 65, which purports to authorize the transfer, relinquishment and donation to the defendant states of a fund of money consisting of royalties for the development of mineral resources in the area described in Question One which accrued after this Court had held that the mineral resources were subject to the paramount jurisdiction and control of the United States and that the defendant states had no property interest in them, a valid exercise of the trust upon which the United States holds this fund under the Constitution?

3. Is Public Law 31, 83d Cong., 1st Sess., c. 65, which purports to authorize the assertions by the defendant states of ownership, dominion and power and exclusive jurisdiction and control of the lands, minerals, marine animal and plant life and other natural resources in the area described in Question One a violation of the constitutional guaranty to Alabama to be treated on an equal footing with the defendant states?

4. Should Public Law 31, 83d Cong., 1st Sess., c. 65, be construed to authorize the assertions of Texas,

Louisiana and Florida that their territories include a belt of territorial waters off their shores nine nautical miles in width, in view of the rule of international law growing out of the long-standing position of the United States that the permissible width of the belt of territorial waters is three nautical miles?

5. If Public Law 31, 83d Cong., 1st Sess., c. 65, is construed as authorizing the territorial assertions set out in Question Four and to authorize the assertions by Texas, Louisiana and Florida of ownership, dominion and power, and exclusive jurisdiction and control of the lands, minerals, marine animal and plant life and other natural resources in this area, does it violate the constitutional guaranty to Alabama to be treated on an equal footing with these three defendant states?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Public Law 31, 83d Cong., 1st Sess., c. 65, the Submerged Lands Act, hereinafter referred to as Public Law 31, is set out in full in Appendix A to this brief, pp. 77-83, *infra*.

Article IV, Section 3, of the Constitution of the United States provides as follows:

> "New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.
>
> "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any

> Claims of the United States, or of any particular State."

Article IV, Section 2, Clause 1 of the Constitution of the United States provides as follows:

> "The Citizens of each State shall be entitled to all the Privileges and Immunities of Citizens in the Several States."

Section 1 of the Fourteenth Amendment to the Constitution of the United States contains the following provision:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The relevant portions of the Acts of Congress admitting Alabama to the Union (Act of March 2, 1819, c. 47, 3 Stat. 489), and those admitting Louisiana (Act of April 8, 1812, c. 50, 2 Stat. 701), Florida (Act of March 3, 1845, c. 48, 5 Stat. 742) California (Act of Sept. 9, 1850, c. 50, 9 Stat. 452), and the Joint Resolution admitting Texas (Joint Resolution No. 8 of March 1, 1845, 5 Stat. 797) are set forth in Appendix B to this brief, pp. 83-85, *infra*.

The legislative acts setting forth the boundary claims of Texas (Act of May 16, 1941, L. Texas, 47th Leg., p. 454, as amended by Act of May 23, 1947, L. Texas 50th Leg., p. 451, Vernon's Ann. Civ. Stat. Art. 5415a) and Louisiana (6 Dart. La. Gen. Stat. [1939], Secs. 9311.1-9311.4, 49 La. Rev. Stat. [1950], Secs. 1 and 2)

and the constitutional provision setting forth the boundary claims of Florida (FLA. CONST. ART. I, 1868) are set forth in Appendix C to this brief, pp. 85-88, *infra*.

Compilations of the statutes by which Texas, Louisiana and Florida purport to regulate fishing within their territorial boundaries are found in Article 934b-1, Vernon's Texas Statutes, 1950 Supplement, 51st Leg.; Title 56, La. Rev. Stat. (1950) Secs. 352, 376-78, 496, 500 and 555; Fla. Stat. 1951 Secs. 373.10, 373.25, 373.13 and 374.30.

STATEMENT

This is an action by the State of Alabama against the States of Texas, Louisiana, Florida and California, and against the following individuals: George M. Humphrey acting under color of authority as Secretary of the Treasury, Douglas McKay, acting under color of authority as Secretary of the Interior, Robert B. Anderson, acting under color of authority as Secretary of the Navy, and Ivy Baker Priest, acting under color of authority as Treasurer of the United States.

The purpose of this suit is twofold: first, to protect the interests of Alabama and its citizens in the natural resources of the waters and submerged lands off the coasts of the United States, and to prevent irreparable damage to these interests resulting from the unlawful expropriation of these resources. The interests of Alabama and its citizens are the consequence of the Federal dominion of these lands and resources, recently delineated by this Court in *United States* v. *California*, 332 U.S. 19 (1947), *United States* v. *Louisiana*, 339 U.S. 699 (1950), and *United States* v. *Texas*, 339 U.S. 707 (1950).

This suit is also for the purpose of protecting, both on its own behalf and on behalf of its citizens, the right of Alabama to be treated on an equal footing with the defendant states with respect to the bounties conferred upon them by Public Law 31, both as that law may attempt to extend the maritime boundaries of certain of the defendant states and as that law attempts to grant valuable lands and natural resources to the defendant states without conferring similar benefits on Alabama.

The facts, as set forth in the Complaint, are as follows: In *United States* v. *California*, 332 U.S. 19 (1947), this Court held that the submerged lands and natural resources lying seaward of the ordinary low water mark (or seaward limit of inland waters) off the coast of California were not the property of California, but were subject to the paramount jurisdiction and control of the Federal Government. This decision held that the Federal Government had the right to license the development of these natural resources. Thus the Federal Government became obligated to apply the royalties for the benefit of all the States and citizens of the United States, a holding, of course, that included Alabama and the citizens thereof. In *United States* v. *Louisiana*, 339 U.S. 699 (1950), and *United States* v. *Texas*, 339 U.S. 707 (1950), there were similar decisions as to the submerged lands and natural resources off the coasts of Louisiana and Texas, respectively. These decisions made it clear that the holding in *United States* v. *California* applied to all the coastal areas off the shores of the United States and that the United States, and not the coastal states, had the right to license the development of natural resources off the coastline of the United States lying seaward of the normal low water mark or from the sea-

ward boundary of inland waters. According to these decisions natural resources estimated to have a value of at least fifty billions of dollars are under the control and paramount jurisdiction of the Federal Government. The Federal Government was obligated to use the funds obtained from the development of these resources for the benefit of all the United States, including Alabama and its citizens.

Prior to these decisions the defendant States of California, Texas and Louisiana had unlawfully entered upon these submerged lands and had unlawfully asserted the right to license the development of these resources and to apply the royalties to the exclusive benefit of their own citizens. After decisions of the Court in the *California*, *Louisiana* and *Texas* cases, leases issued by these states were continued in effect but the royalties derived from them were either impounded or held in escrow. As a result, a fund of over $62,000,000 was accumulated in which the Federal Government, acting as trustee for all the United States, has the legal interest and in which the defendant states have no beneficial interest other than that which they share in common with all the other states of the Union.

On May 22, 1953, the Congress enacted Public Law 31. This law purports to declare that the coastal states, and not the Federal Government, own and have the right to develop the subsoil and the natural resources of the submerged lands seaward of the ordinary low water mark off their coasts or the seaward limit of inland waters. This law also attempts to release to the coastal states (with certain exceptions) all right, title or interest in the subsoil and natural resources in these areas and to include in these natural resources

fish and other marine animal and plant life. The law also purports to direct the individual defendants to pay or release to the defendant States of California, Louisiana and Texas the $62,000,000 which had accrued as a result of the continued operations under the state licenses.

Alabama citizens have long enjoyed a privilege under the Constitution of fishing in the Gulf of Mexico. Beyond three miles from the shore they are entitled to exercise this privilege without restrictions or prohibitions—including onerous excises—by other states of the Union. In fishing on the high seas they are subject only to regulation and licensing imposed by authority of their own state or their own national government. Moreover, even when fishing within three miles of the shore, they may not be subjected to discriminatory regulation by reason of their Alabama residence, and certainly may not be excluded altogether. As a result of the exercise of these privileges, a fishing industry has developed in Alabama bringing in a gross annual revenue of over $15,000,000 and providing a livelihood for thousands of Alabama citizens.

Public Law 31, however, purports to define the boundaries of the various coastal states. It does so in a way which limits the boundaries of Alabama to a belt of three geographic miles lying seaward from the ordinary low water mark lying off its coasts or of the seaward limit of its inland waters. The defendants Texas, Louisiana and Florida, however, have interpreted the law in a manner which permits them to claim as within their boundaries a corresponding belt nine nautical miles in width and to claim exclusive ownership and control of the natural resources found within such a belt. The individual defendants, moreover, have indi-

cated their acquiescence in such a claim. As described in more detail below, such action would have an adverse effect upon the fishing industry of Alabama, and would greatly increase the value of the assets held in trust for all the United States which the individual defendants threaten to turn over solely to the defendant states.

The acquiescence by the individual defendants in the "historic claims" of Texas, Louisiana and Florida to a belt of territorial waters nine nautical miles in width is unlawful. None of these three defendant states was entitled to such a territorial belt at the time it entered the Union, and none of these "historic claims" has been recognized by the Congress since their admission. Indeed, it has been the consistent policy of the United States that the permissible width of the belt of territorial waters is three nautical miles. Therefore the assertions of these three defendant states are not justified by the terms of Public Law 31.

With the exception of the portion dealing with the states which are entitled to a three to nine mile belt of territorial waters, Public Law 31, on its face, purports to apply equally to all coastal states. However, in fact, the most valuable natural resources now known to exist in the submerged land areas off the coasts of the United States are located off the coasts of the defendant states. Hence the appearance of uniformity of treatment among the coastal states is unreal; in fact, the four defendant states are the true beneficiaries of Public Law 31 and are put into a quite different and favored category from the other coastal states.

The actions threatened to be taken by the defendant states and by the individual defendants will, unless restrained by this Court, cause irreparable injury to the State of Alabama in the following particulars:

1. Alabama and its citizens will be deprived of their equitable interest in the immensely valuable resources of the marginal seas and the royalties which will accrue from the development of these resources;

2. Alabama and its citizens will be deprived of their equitable interest in the fund of $62,000,000 now subject to the control of the Federal Government and held by the individual defendants in trust for all the United States, including Alabama and the citizens thereof;

3. Alabama will be reduced to a status of inferior sovereignty with respect to the defendant states because of the granting to these states of immensely valuable property interests which have been held to be an attribute of sovereignty;

4. Alabama will be reduced to a status of inferior sovereignty with respect to the defendant States of Texas, Louisiana and Florida because those states will be permitted to extend their territorial boundaries to include a belt nine nautical miles in width off their coasts and given ownership of the natural resources in such a belt while Alabama is permitted to extend its own territorial boundaries only to include a corresponding belt three nautical miles in width.

5. Alabama and its citizens will be injured because the defendant States of Texas, Louisiana and Florida now have and will put into effect regulations which require Alabama fishermen to pay license fees to these defendant states for the privilege of fishing on the high seas more than

three miles from their shores and because these defendant states will assert the right to discriminate against Alabama fishermen or to exclude them altogether from the entire area nine miles from their shores.

Alabama contends that Public Law 31 as interpreted and applied by the defendants, is unconstitutional for the reasons which are set forth in detail in this brief. Alabama therefore asks for injunctive relief against the action taken and proposed to be taken by the defendants under color of Public Law 31.

SUMMARY OF ARGUMENT

I

THE STATE OF ALABAMA HAS STANDING TO SUE

Alabama is suing both to protect its sovereign interests as a State and as quasi-sovereign and *parens patriae*. As a sovereign Alabama is suing to protect its right to be treated on an equal footing with the defendant states of Texas, Louisiana and Florida with respect to the width of the belt of territorial waters off her shores. By assertions under color of Public Law 31 these defendants have extended and will extend their boundaries into the Gulf of Mexico to nine nautical miles. Thus, Alabama, whose boundaries extend only three nautical miles beyond the low water mark on its coast or beyond the seaward limit of its inland waters, is deprived of equal sovereignty vis-a-vis these defendant states. In deciding controversies between states this Court acts in a role comparable to that of an international body deciding disputes between national states. The present controversy, involv-

ing an attempt to extend jurisdiction to the high seas, falls within a well recognized category of disputes which are subject to judicial settlement.

Moreover, Alabama sues to protect its interest in the natural resources involved in this controversy which are threatened by the action of the defendants. Since the property interest in these resources is an essential attribute of sovereignty, deprivation of an equal interest in these resources is tantamount to denial to Alabama of sovereignty equal to that of the defendant states.

Alabama also sues as quasi-sovereign and *parens-patriae* under doctrines allowing a state to attack the validity of a measure which has an adverse effect upon the economic welfare of a substantial number of its citizens.

The defendants Texas, Louisiana and Florida, unless restrained by the Court, threaten to deny to the citizens of Alabama the privilege of engaging in the fishing industry in the Gulf of Mexico without license or regulation whatsoever beyond the three mile limit and without discrimination because of their residence within three miles of the shore. These defendant states do not merely attempt to place Alabama fishermen under their jurisdiction, when fishing on the high seas in the Gulf of Mexico, but also assert the right to prevent Alabama fishermen from exercising this privilege by discriminatory regulation. Acting under color of Public Law 31 these defendants assert ownership of the natural resources both within three miles from

their shores and on the high seas, and the consequent right to exclude non-residents altogether.

Furthermore, Alabama asserts beneficial interests in the land and resources and the revenues which have been and are to be derived therefrom.

These lands and resources, worth at least fifty billion dollars, as well as the revenues derived and to be derived from them, must be held in trust for the benefit of all the citizens of the United States, including the citizens of Alabama. The action which the defendants propose to take will deprive Alabama and its citizens of their rightful interest in these lands or resources.

Alabama, asserting sovereign interests of its own, as well as economic and financial interests on its own behalf and on behalf of its citizens, does not run afoul of *Massachusetts* v. *Mellon*, 262 U.S. 447 (1923). Alabama does not ask a decision upon abstract questions of political power but the adjudication of a specific controversy in which it has a definite interest. Moreover, the decisions of this Court in *Hopkins Savings Association* v. *Cleary*, 296 U.S. 315 (1935); *Pennsylvania* v. *West Virginia*, 262 U.S. 553 (1923); and *Georgia* v. *Pennsylvania Railroad*, 324 U.S. 439 (1945) leave no doubt as to Alabama's standing to sue.

II

PUBLIC LAW 31 IS NOT A VALID EXERCISE OF THE POWER OF CONGRESS TO DISPOSE OF PUBLIC LANDS OF THE UNITED STATES

The decisions of this Court in *United States* v. *California*, 332 U.S. 19 (1947); *United States* v. *Louisiana*, 339 U.S. 699 (1950), and *United States* v. *Texas*, 339 U.S. 707 (1950), established that the submerged lands

and natural resources involved in this proceeding do not belong and have never belonged to the defendant states. This Court has held that the United States has the paramount right and dominion over these lands and resources. Under Article IV, Section 3, Clause 2 of the Constitution any action taken by the United States in connection with these resources must be taken by the United States in its capacity as trustee for all the people of the United States.

Congress must therefore exercise its judgment *as a trustee.* This is similar to the requirement that federal spending must be for the general welfare. *Helvering* v. *Davis,* 301 U.S. 619 (1937). In a similar case involving state disposition of state-owned property this Court held invalid a transfer of state-owned property to a private corporation as a perversion of the trust under which the property was held for the benefit of all the people of the state. *Illinois Central R. Co.* v. *Illinois,* 146 U.S. 387 (1892).

Public Law 31 cannot be defended as a valid exercise of a trust. It makes national assets valued at at least fifty billion dollars available solely to four states to the detriment of the other forty-four. An analysis of the legislative history as well as the circumstances which surrounded its passage makes it clear that the Congress did not exercise its judgment as a trustee for all the people of the United States. It merely expressed its opinion that the Court had improperly interpreted the Constitution in the *California, Louisiana* and *Texas* cases.

III

PUBLIC LAW 31 DENIES THE STATE OF ALABAMA RIGHTS GUARANTEED IT BY ITS ADMISSION TO THE UNION ON AN EQUAL FOOTING WITH THE OTHER STATES

The State of Alabama has a right to be treated on an equal footing with the defendant states both by virtue of the Act admitting Alabama to the Union and the guarantee of the Constitution. This guarantee extends to all elements of sovereignty including those property rights which have been held to be essential attributes of sovereignty. *United States* v. *Texas*, 339 U.S. 707 (1950).

Public Law 31 violates the equal footing clause, first, because it was designed to give to the defendant states those property rights in the submerged lands which are the attributes of sovereignty, while appearing to give similar rights to the other coastal states without actually doing so. This does not constitute equal treatment, since the known valuable property interests are in the submerged lands off the coasts of the defendant states. Second, Public Law 31 as applied violates the equal footing clause by permitting three of the defendant states to extend their borders to include a territorial belt off their coasts nine nautical miles in width while, limiting Alabama to a belt three nautical miles in width. As a result of this unequal treatment Alabama citizens will be deprived of the right freely to fish on the high seas between three and nine miles off the coasts of these three defendant states. These defendant states assert the right to exclude Alabama fishermen entirely from this area, as well as from the area within three miles from their coasts in violation of the rule laid down in *Toomer* v. *Witsell*, 334 U.S. 385 (1948).

Moreover, Public Law 31 does not authorize the extension of the territorial boundaries of the defendants Texas, Louisiana and Florida to include the belt within nine miles from their shores. Under the statutory test, the defendant states must either have been entitled to such a belt of territorial waters at the time they entered the Union, or their claim to such a belt must have been approved by the Congress prior to the enactment of Public Law 31 on May 22, 1953. The three defendant states, Texas, Louisiana and Florida, were not entitled to such a belt at the time they entered the Union. Their claims have never been approved by the Congress.

Public Law 31 must be applied in light of the treaty commitments of the United States to Great Britain, Germany, The Netherlands, Panama, Cuba and Japan to support the principle that three miles is the proper width of the belt of territorial waters. These commitments are still outstanding and one of them, that to Japan, was reassumed as recently as July 22, 1953.

IV

THE SUIT AGAINST THE INDIVIDUAL DEFENDANTS DOES NOT CONSTITUTE A SUIT AGAINST THE UNITED STATES

It is well established that a public official may be enjoined from attempting to enforce a statute which is unconstitutional, or from acting in excess of his statutory authority. In neither case is the action of the public official the act of the sovereign.

ARGUMENT

I

THE STATE OF ALABAMA HAS STANDING TO SUE

Alabama invokes the original jurisdiction of this Court, pursuant to Article III, Sections 1 and 2, of the Constitution and Title 28, United States Code, Section 1251, in a dual capacity: First, as a sovereign, Alabama asserts a controversy over sovereign rights of the sort formerly settled between independent states, but now made justiciable by the Constitution. (*Kansas* v. *Colorado,* 185 U.S. 125, 141 (1902)) Second, as a quasi-sovereign or *parens patriae* for its citizens, Alabama asserts rights and privileges, guaranteed by the Constitution, and destroyed or threatened by defendants acting under color of Public Law 31.

A. ALABAMA HAS STANDING AS A SOVEREIGN STATE

1. THE SOVEREIGN INTERESTS OF ALABAMA ARE ADVERSELY AFFECTED BY THE TERRITORIAL CLAIMS OF THE DEFENDANTS TEXAS, LOUISIANA AND FLORIDA

Alabama and the defendant states were admitted to the Union on an equal footing with the original states and hence with each other. See *United States* v. *Texas,* 339 U.S. 707, 716-718 (1950). This assurance of equal footing exists as a matter of constitutional and statutory guarantee, since implicit in congressional power to admit new states to the Union (Art. IV, Sec. 3, Cl. 1) is the requirement that the states come in on an equal footing with the other states and remain so. *Coyle* v. *Smith,* 221 U.S. 559, 567 (1911); *Skiriotes* v. *Florida,* 313 U.S. 69, 77 (1941).

The boundaries of Alabama extend only three nautical miles beyond mean low water on its coast or be-

yond the seaward limit of its inland waters. By assertions under color of Public Law 31, however, the defendants Florida, Texas and Louisiana have extended and will extend their boundaries into the Gulf of Mexico to three marine leagues (nine nautical miles) in the manner described in paragraphs XXII, XXV and XXVIII of the Complaint. If permitted to stand unchallenged, these actions would deprive Alabama of equal sovereignty vis-a-vis these defendant states. Alabama, therefore, has standing to question action which purports to demean its sovereignty by extending the sovereignty of these three states more than three nautical miles beyond their coasts or the seaward limit of inland waters.

In asserting the sovereign right to be treated on an equal footing with the defendant States of Texas, Louisiana and Florida with respect to the width of the belt of territorial waters in the Gulf of Mexico, Alabama is raising an issue which, under a long line of rulings of this Court, is justiciable in the constitutional sense. The cases discussed below indicate that this Court has given great weight to the intent of the framers of the Constitution that this Court, rather than Congress, be the forum for the settlement of disputes between the states.

Indeed, this Court has often recognized that in deciding controversies between two or more states it is acting in a role comparable to that of an international body deciding disputes between national states. Thus in *Missouri* v. *Illinois*, 180 U.S. 208 (1901) a case which involved the claimed pollution of the Mississippi river under the authority of the State of Illinois, the Court upheld the standing of Missouri to maintain the suit by the following observation: (180 U.S. at 241)

"If Missouri were an independent and sovereign State all must admit that she could seek a remedy by negotiation, and, that failing, by force. Diplomatic powers and the right to make war having been surrendered to the general government, it was to be expected that upon the latter would be devolved the duty of providing a remedy and that remedy, we think, is found in the constitutional provisions we are considering."[1]

Alabama does not contend that all matters which would be proper subjects for diplomatic negotiation by the states, if they were independent states, are appro-

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[1] Mr. Justice Holmes gave a similar rationale of the original jurisdiction of the Court when the Court considered a later phase of the same controversy in Missouri v. Illinois, 200 U.S. 496, 518 (1906):

"The only question presented was whether as between the States of the Union this court was competent to deal with a situation which, if it arose between independent sovereignties, might lead to war. Whatever differences of opinion there might be upon matters of detail, the jurisdiction and authority of this court to deal with such a case as that is not open to doubt."

Later in the opinion Mr. Justice Holmes drew an analogy between the dispute between states over the alleged pollution of an interstate river such as the Mississippi to the disputes between the nations which would arise over the pollution of an international river such as the Danube. See 200 U.S. at 520.

In Kansas v. Colorado, 206 U.S. 46 (1907), a case involving the alleged diversion by Colorado of the waters of the Arkansas river, the Court upheld its competence to deal with the matter with the following statement: (206 U.S. at 97)

"Nor is our jurisdiction ousted, even if, because Kansas and Colorado are States sovereign and independent in local matters, the relations between them depend in any respect upon principles of international law. International law is no alien in this tribunal."

priate matters for submission to this Court under Article III. Obviously, a variety of matters which would be proper subjects of diplomatic negotiation are not appropriate for judicial determination. In considering whether a state has the requisite *interest* to bring a suit against another state, however, this Court has not applied the same criteria which it applies to a suit brought by a private individual.[2] The Court has rather looked to see whether the complaining state has the type of interest which, if the states had not joined the Union, would be the subject of diplomatic negotiations, international adjudication or even war. Of course, the Court has insisted that the dispute be a substantial one. In this connection, the economic interests of a state and its inhabitants are relied on, not as establishing the standing of the state to sue, but as demonstrating the serious nature of the controversy. Finally, the Court has required that the matter in issue between the states be one susceptible of judicial determination.

The case at hand satisfies all three criteria. First, there is no question but that if Alabama, Texas, Louisiana, and Florida were independent nations, and not states of the Union, Alabama would be entitled to enter a protest and carry on diplomatic negotiations concerning the attempts of the States of Texas, Louisiana and Florida to extend their boundaries nine miles into the Gulf of Mexico. This would be true even though, as in the present case, Alabama was not asserting its

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[2] As this Court stated in Hans v. Louisiana, 134 U.S. 1, 15 (1890): "Some things, undoubtedly, were made justiciable which were not known as such at the common law; such, for example, as controversies between States as to boundary lines, and other questions admitting of judicial solution. . . ."

own sovereignty in these areas, but was asserting that the areas were part of the high seas and should remain free from assertions of sovereignty on the part of Texas, Louisiana and Florida.

The United States, for example, has consistently made diplomatic protests of this nature to Mexico, because of Mexico's attempts to extend her boundaries nine nautical miles into the Gulf of Mexico. 1 Hackworth, *Digest of International Law*, 639-41. In these protests the United States did not assert its own sovereignty in these areas but asserted that the areas in question were part of the high seas and should remain free from assertions of sovereignty on the part of Mexico. As recently as 1951, the International Court of Justice did not question the right of the United Kingdom to urge that Norway was attempting to include within its boundaries what was part of the high seas. *Fisheries Case*, (*United Kingdom* v. *Norway*) 1951 I.C.J. Reports 116, 126.

Alabama as a member of the Union, has surrendered the right to enter into diplomatic negotiations with Texas, Louisiana and Florida, concerning their assertions of sovereignty in the Gulf. In return, Alabama has obtained the standing to complain in this Court that such assertions are contrary to the law of the land.

Secondly, the dispute is unquestionably a serious one. Mr. Justice Holmes, in his analysis of the bases of jurisdiction in *Kansas* v. *Colorado*, *supra*, cited the pollution of an international stream as an example of the type of dispute which would be serious enough to cause an international dispute so that the Supreme Court would take jurisdiction over such a dispute when it arose between states. An examination of diplomatic history shows that international disputes over the per-

missible limits of territorial waters have been of equally grave international concern. In 1923 for example, Great Britain felt so strongly that the claim of the U.S.S.R. to a belt of twelve miles was not justified, that the Admiralty instructed a British warship to prevent interference with British vessels more than three miles distant from the coast of the U.S.S.R., using force if necessary. 163 Parl. Deb. (1923) Commons, Col. 2578. Similarly, a reading of the recent note sent by the United States Government to the U.S.S.R., rejecting the latter's claim to a belt of territorial waters twelve miles wide, leaves no doubt but that this is a controversy just as serious as any controversy over the pollution of a river. See Vol. 99 Cong. Rec. 4266.

The interest of the State of Alabama is a substantial one. This interest is dealt with in detail in the portion of this brief dealing with Alabama's interest as quasi-sovereign and *parens patriae*. For present purposes it is enough to peint out that the natural resources in the area from three to nine nautical miles off the coasts of Texas, Louisiana and Florida in the Gulf of Mexico are rich. Many Alabama citizens obtain their livelihood from the development of these resources. For example, the seafood resources of the Gulf of Mexico support an industry on which thousands of Alabama citizens are wholly or partially dependent for their livelihood. Alabama has a clear interest in seeing that these resources are free to its citizens. This interest is not diminished by virtue of the fact that in this aspect of the case, Alabama is not trying to establish for itself a property right in the area in question. For example, this Court has allowed states to present disputes concerning their boundaries—holding the controversies

justiciable against contention that the issue seemingly related to political questions of sovereignty.[3] Suits by one state against another to prevent diversion of the flow of an interstate stream from the complaining state have been entertained.[4] Similarly, this Court decided whether action of one state had unlawfully caused an overflow of waters into another.[5] In these water diversion cases, this Court has said:

> "The present claimants being States, we think the clash of interests to be of that character and dignity which makes the controversy a justiciable one under our original jurisdiction."[6]

In none of these cases did this Court predicate its holding of standing to sue on a showing of a property right in the complainant.

Third, there is no question but that the breadth of the territorial waters is a question susceptible of judicial determination. For example, in *United States* v. *California*, 332 U.S. 19 (1947) this Court has referred to a Master the method of determining the seaward boundaries off the coast of California. The International Court of Justice has treated as a justiciable ques-

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[3] See, e.g., Virginia v. West Virginia, 11 Wall. 39 (1870); New Jersey v. New York, 5 Pet. 284 (1830); Rhode Island v. Massachusetts, 12 Pet. 657 (1838); Missouri v. Iowa, 7 How. 660 (1849); Florida v. Georgia, 17 How. 478 (1854); Alabama v. Georgia, 23 How. 505 (1859); Missouri v. Kentucky, 11 Wall. 395 (1870); Louisiana v. Mississippi, 282 U.S. 458 (1931).

[4] Kansas v. Colorado, 206 U.S. 46 (1907); Colorado v. Kansas, 320 U.S. 383 (1943); Connecticut v. Massachusetts, 282 U.S. 660 (1931); Wyoming v. Colorado, 259 U.S. 419 (1922); Wisconsin v. Illinois, 278 U.S. 367 (1929).

[5] North Dakota v. Minnesota, 263 U.S. 365 (1923).

[6] Nebraska v. Wyoming, 325 U.S. 589, 610 (1945).

tion the claims of the United Kingdom that Norway was, by legislation, unlawfully attempting to include part of the high seas within its boundaries. *Fisheries Case, United Kingdom* v. *Norway, supra.*

2. THE SOVEREIGN INTERESTS OF ALABAMA ARE ADVERSELY AFFECTED BY THE CLAIMS OF ALL DEFENDANT STATES IN THE LANDS AND OTHER NATURAL RESOURCES COVERED BY THIS SUIT.

Alabama asserts a sovereign interest, constitutionally protected, to be treated on an equal footing with the defendant states, with respect to the revenues and other benefits to be obtained from the development of the off-shore natural resources involved in this suit.

This Court, in *United States* v. *Texas*, 339 U.S. 707 (1950), held that the rights to the subsoil involved in this suit, and the natural resources therein, while in the nature of property rights, were so subordinated to sovereignty as to follow sovereignty. In the words of the Court: (339 U.S. at 719)

> "(A)lthough *dominium* and *imperium* are normally separable and separate, this is an instance where property interests are so subordinated to the rights of sovereignty as to follow sovereignty."

Moreover, in the Texas case the Court stated that the equal footing clause was designed "to create parity as respects political standing and sovereignty" (339 U.S. at 716) and went on to hold that the equal footing clause applies to the very interests in off shore oil and other natural resources which are in controversy in this proceeding. See also *Stearns* v. *Minnesota*, 179 U.S. 223, 245 (1900).

This decision establishes two salient points. First, under the equal footing clause Alabama has a constitu-

tionally guaranteed right to be treated on a parity with the defendant states with respect to the assets involved in this proceeding. Second, Alabama has this right as a *sovereign right and interest*, over and above any right and interest which it may have, either as a beneficiary of a trust under which the federal government holds property for the benefit of all the United States, and over and above any interest which it asserts as quasi-sovereign or as *parens patriae* for the benefit of its citizens.

The action which the defendants are proposing to take, under color of Public Law 31, is to transfer to the defendant states Texas, Louisiana, Florida and California, the *sole* interest in these natural resources. The effect of such action would be to deny to the state of Alabama its sovereign right to be on an equal footing with defendant states with respect to these assets, estimated to be worth at least fifty billion dollars. This transfer of sovereign rights is retroactive; it looks to the past as well as the future. For example, it is proposed to release or transfer to the States of California, Texas and Louisiana over $62,000,000 derived from rents and royalties which accrued after the ruling of this Court that the United States was entitled to them as an essential portion of its sovereignty.

The threatened denial of equal sovereignty to Alabama is not remote or speculative. It is real and pressing. It is more direct and immediate than similar situations in which this Court has held that standing to sue existed. For example, in *Texas* v. *Florida*, 306 U.S. 398 (1939) this Court assumed original jurisdiction to resolve conflicting claims concerning a decedent's domicile and claims of shares in the decedent's estate for

state death tax purposes. An assumption essential to Texas standing was:

> "... the existence of solid danger that the highest courts of four states will ascertain this fact (*i.e.*, domicile) in four different ways. Texas has no standing here except on the basis that three state courts will despoil her of her rights by leaving no assets in the estate out of which to satisfy her claim."[7] (parenthesis supplied)

A showing of injury to Alabama requires no such extensive factual assumption. The allegations in the Complaint, and the supporting evidence which will be introduced by leave of this Court, leave no doubt that Alabama has more than an academic interest in the constitutionality of Public Law 31. The right which it seeks to vindicate—the sovereign right to be treated on an equal footing with respect to lands and natural resources worth at least fifty billion dollars—is real and immensely valuable. Moreover Alabama's concern does not arise from mere uncertainty as to the future course of action which the defendants might take. By their past assertions and public utterances the defendants have made it perfectly clear that they will exploit the lands and resources involved in this proceeding for the sole and exclusive benefit of the defendant States of California, Texas, Louisiana and Florida and to the detriment of Alabama.

B. ALABAMA HAS STANDING AS QUASI-SOVEREIGN AND PARENS PATRIAE

Alabama sues also as quasi-sovereign and *parens patriae* for its citizens. Alabama asserts equitable and

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[7] Texas v. Florida, 306 U.S. 398, 431 (1939), (dissenting opinion of Frankfurter, J.)

beneficial interests in the lands and resources and the revenues therefrom in the submerged lands off the shores of defendant states described in paragraphs IX, X, XIII and XVI of the Complaint, and in a portion of the fund of over $62,000,000 now in the hands of the individual defendants. Alabama also asserts on behalf of a substantial number of its citizens the non-exclusive privilege to fish in the submerged lands within three miles off the shores of the defendants Texas, Louisiana and Florida and on the high seas off the shores of those states as described in paragraphs XII, XV and XVII of the Complaint.

The right of a state to maintain a suit in this Court as "quasi-sovereign" and *"parens patriae"* even though the state itself has no proprietary interest in the rights sought to be protected, has been recognized in a long series of decisions of this Court. In large part on this ground a line of cases has held that a state has standing to question the legality of a diversion of water in an interstate stream which flows through its boundaries.* Similarly a state has been held to have standing to object to the pollution of an interstate stream

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* See cases cited in footnotes 4 and 5, page 23, *supra*. The following quotation from the opinion in Kansas v. Colorado, 185 U.S. 125, 142 (1902), is enlightening as to the theory on which the Court has supported the standing of the states to sue in these cases:

> "(T)he mere fact that a State had no pecuniary interest in the controversy, would not defeat the original jurisdiction of this court, which might be invoked by the State as *parens patriae*, trustee, guardian or representative of all or a considerable portion of its citizens; and . . . the threatened pollution of the waters of a river flowing between States, under authority of one of them, thereby putting the health and comfort of the citizens of the other in jeopardy, presented a cause of action justiciable under the Constitution."

which flows through its boundaries.[9] A state has been permitted to invoke the original jurisdiction of this Court to enjoin a manufacturer in a neighboring state from discharging noxious gases over its territory; the complaining state sued in a quasi-sovereign capacity to protect its air from pollution and to safeguard its forests and mountains.[10]

The right of a state to sue in this Court as *parens patriae* was also upheld in *Pennsylvania* v. *West Virginia*, 262 U.S. 553 (1923). In that case Pennsylvania sued to enjoin the enforcement of a West Virginia conservation statute which threatened to cut off the supply of natural gas flowing from West Virginia fields to Pennsylvania. Injury to the health and comfort of citizen users and to industrial users was alleged. This Court found that Pennsylvania had standing, not only as a proprietor of public institutions which used the gas, but "as the representative of the consuming public whose supply will be similarly affected." (262 U.S. 553, 591.) Where matters of health, comfort and welfare are concerned, the state "as the representative of the public, has an interest apart from that of the individuals affected." (262 U.S. 553, 592.)

The doctrines set forth in *Pennsylvania* v. *West Virginia* have recently been applied by this Court in *Georgia* v. *Pennsylvania Railroad*, 324 U.S. 439 (1945). In that case Georgia was permitted to bring an original suit to enforce the civil remedies of the anti-trust laws on an allegation that the economy of Georgia and the

[9] Missouri v. Illinois, 180 U.S. 208 (1901); New York v. New Jersey, 256 U.S. 296 (1921).

[10] Georgia v. Tennessee Copper Co., 206 U.S. 230 (1907); cf. Trail Smelter case (arbitration between United States and Canada) III Reports of Arbitral Awards 1905, 1964.

welfare of her citizens had suffered serious injury from a conspiracy of the defendant railroad companies. The Court upheld the right of Georgia to maintain such a suit as *parens patriae*. Indeed, Georgia's allegation of injury to a state-owned railroad were described as a mere "makeweight". See 324 U.S. at 450. The Court held that an adequate ground to support Georgia's standing was that Georgia, as *parens patriae*, had the right to question the legality of any action which threatened to injure the economy of the state. In speaking of this right the Court said: (324 U.S. at 451)

> "(D)iscriminatory rates fastened on a region have a more permanent and insidious quality. Georgia as a representative of the public is complaining of a wrong, which if proven, limits the opportunities of her people, shackles her industries, retards her development, and relegates her to an inferior economic position among her sister States . . . Georgia's interest is not remote; it is immediate. If we denied Georgia as *parens patriae* the right to invoke the original jurisdiction of the Court in a matter of that gravity, we would whittle the concept of justiciability down to the stature of minor or conventional controversies. There is no warrant for such a restriction."

From an analysis of these cases it is possible to draw certain conclusions which are applicable to the case at bar. First, it is not necessary that the acts complained of occur within the complaining state. The complaining state need only show that the act complained of have an effect within it.

Second, the complaining state is not required to assert a property interest which is adversely affected by the act complained of. The complaining state need

> sovereignty, in trust for the public. . . . The trust with which they are held, therefore, is governmental and cannot be alienated, . . .
>
> "This follows necessarily from the public character of the property, being held by the whole people for purposes in which the whole people are interested."

The considerations which the Court indicated were applicable in the *Illinois Central* case, are equally applicable to the property owned by the Federal Government. They are equally applicable to the case at bar. They make it clear that while the Court will not ordinarily review the wisdom of particular action taken by Congress in exercising its trust, it will look to see whether Congress exercised its judgment *as a trustee* or whether it was acting on the basis of other considerations.

The rationale of the Court in the *Illinois Central* case points up the strong similarity between the test applied in that case and other cases involving public lands, and the test applied by courts in the administration of private trusts. There a court will not normally interfere with the exercise by a trustee of a discretionary power. It will, however, interpose when the trustee has either acted for a reason other than that of furthering the purposes of the trust or has failed to exercise the judgment—judgment *as a trustee*—required by the discretionary power. In short, even though the discretion of the trustee may be broad, it must appear that the trustee has exercised the type of judgment required by the trust and maintained his fiduciary relationship to all the beneficiaries.[18]

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[18] 1 Restatement, Trusts Sec. 187(g)(h) (1935); 2 Scott, Trusts Sec. 187 (1939).

An attempt will doubtless be made to support Public Law 31, not on the grounds that it was in fact a valid exercise of a public trust by the Congress, but on the grounds that this Court is powerless to inquire whether it was or not. Proponents of Public Law 31 will doubtless attempt to draw support from a statement of Mr. Justice Black in the *California* case, in which he said: (332 U.S. at 27)

> "We have said that the constitutional power of Congress in this respect is without limitation. *U.S.* v. *San Francisco*. . . . Thus neither the courts nor the executive agencies could proceed contrary to an Act of Congress in this congressional area of national power."

The context of this statement is important. California had contended that the Attorney General was without power to maintain the suit against it because Congress, without articulation, had manifested a policy that the states, and not the Federal Government, have legal title to the lands involved. This Court stated that Congress could limit the power of the Attorney General to prosecute claims for the Government but had not done so, and it is in this connection that the statement was made. The most that can be distilled from this statement in context is a recognition that the Congress, through legislation or through control over appropriations, can exert control over the executive branch of the Government, including that part of the executive branch charged with the conduct of litigation, in a manner which this Court should respect.

Furthermore, in this portion of the Court's opinion, the holding was merely that the Congress had not limited the power of the Attorney General to bring legal proceedings on behalf of the Government. In view of the emphasis which the Court's opinion placed on the fact that the Government of the United States holds its interests in trust for all the people of the United States,[19] this opinion can not be relied upon to support the claim that the Federal Government's power to dispose of property is either without constitutional limitation or beyond the power of this Court to review.

It is also true that this Court, in *United States* v. *San Francisco*, 310 U.S. 16 (1940), stated that the power of Congress over public lands is without limitation, and after indicating that the Government held public lands in trust for all the people, quoted with approval a statement that: "And it is not for the courts to say how that trust shall be administered." See 310 U.S. at 29. Here again the context was radically different from that of the present case. That case involved an Act of Congress which had granted to the City of San Francisco certain lands and rights of way to enable the city to construct and maintain a reservoir for water and power purposes. The Act contained a provision that the city should itself distribute the power produced at the reservoir, rather than distribute it through a privately owned utility. This was the provision, attacked as unconstitutional by the city, which was the subject of the Court's remarks. It will be noted that the purpose of this provision was to ensure the most widespread possible benefits from the use of public property.

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[19] See quotation on page 43, *supra*.

This observation is equally applicable to the other cases which are usually cited for the general proposition that the Court will not inquire as to how Congress administers its trust with respect to public lands. All of them involve situations in which Congress imposed conditions on the disposition of public lands which were calculated by Congress to obtain the widest public benefits from the use of the land. In these cases the grantee, although willing to take the land, was objecting to the conditions, often on the asserted ground that the conditions invaded the reserved powers of the states, often on the asserted ground that the condition would not have the results which Congress wished to produce. The Court has universally rejected these arguments, and it is in this context that it has made statements such as those quoted in *United States* v. *San Francisco*.[20] In all of these cases, moreover, the Court has reiterated that the United States holds public lands as a trustee for the whole country.[21]

The argument that the power of Congress to dispose of Federal property is beyond judicial review is an argument which would make of the "property clause"

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[20] United States v. Gratiot, 14 Pet. 526 (1840), (United States has power to lease mineral lands rather than sell); Light v. United States, 220 U.S. 523 (1911), (United States, in making public lands available for pasturage, had authority to require compliance with conservation regulations which prohibited acts permitted under state law); Federal Power Commission v. Idaho Power Co., 344 U.S. 17 (1952), (Federal Power Commission can require power company to carry government power as a condition of construction of a dam and power lines over public lands).

[21] This principle has also been set out in United States v. Beebe, 127 U.S. 338, 342 (1888); United States v. Trinidad Coal Co., 137 U.S. 160, 170 (1890); Camfield v. United States, 167 U.S. 518, 524 (1897); Causey v. United States, 240 U.S. 399, 402 (1916).

of the Constitution a reservoir of power far exceeding grants of power in other sections of the Constitution. If such an argument were accepted, Congress could use Federal property without limitation for any purpose, however unrelated to the spirit of the Constitution and the ordinary and proper function of government. Such a view would be inconsistent with the basic principles which this Court has applied in interpreting the Constitution. For example, this Court has held that Congress may not exercise its spending power without limitation. On the contrary, this Court has made it clear that the Congress may spend only for the general welfare. *Helvering* v. *Davis*, 301 U.S. 619 (1937). In the words of this Court: (301 U.S. at 640)

> "The line must still be drawn between one welfare and another, between particular and general."

Similarly, this Court has held that states and their subdivisions may not exercise their power of taxation for a private purpose but only for a public one.[22] The Court has imposed a similar limitation upon the power of the States to take property even where an adequate provision is made for compensation.[23]

The principles of these decisions apply equally when Congress is disposing of public property. First, this Court has made it quite clear that the congressional exercise of power under the property clause (Article IV, Section 3, Clause 2 of the Constitution) is subject to review. For example, this Court has indicated that

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[22] See Citizens Saving & Loan Ass'n v. Topeka, 20 Wall. 655 (1874); Cole v. La Grange, 113 U.S. 1 (1885); Carmichael v. Southern Coal & Coke Co., 301 U.S. 495 (1937); Everson v. Board of Education, 330 U.S. 1 (1947).

[23] Thompson v. Consolidated Gas Co., 300 U.S. 55 (1937).

there are constitutional objections to the Congress making excessive delegations concerning the terms and conditions on which property is disposed.[24] Similarly, this Court has indicated that the Congress, in legislating under the same clause with respect to the territories, is subject to "fundamental limitations in favor of personal rights."[25] Finally, this Court has indicated that in reviewing the disposal of Federal property under this clause, it will require that the disposal of property meet at least the same test of public purpose as that required by the cases dealing with spending, state taxation and state condemnation described above. In the case of *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288 (1936), the Court undertook to review the constitutionality of a disposition of property under this clause. Chief Justice Hughes stated the criteria which were being applied in this review in the following terms: (297 U.S. at 338)

> "The constitutional provision is silent as to the method of disposing of property belonging to the United States. That method, of course, must be an appropriate means of disposition according to the nature of the property, *it must be one adopted in the public interest as distinguished from private or personal ends,* and we may assume that it must be consistent with the foundation principles of our dual system of government and must not be contrived to govern the concerns reserved to the States." (Emphasis supplied.)

It is now appropriate to examine the consideration which lay behind the enactment of Public Law 31, in order to determine whether Congress exercised a judg-

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[24] Butte City Water Co. v. Baker, 196 U.S. 119 (1905).

[25] Mormon Church v. United States, 136 U.S. 1 (1890).

ment consonant with the terms of the trust. Such an examination fails to show that the proponents of the bill urged, or the Congress considered, whether the disposition of the resources which it involved was for the benefit of all the people. The principal basis for the legislation seems to be the thought that this Court's decisions were wrong and denied to the defendant states property which was rightfully theirs. Congress simply undertook to overrule the decisions of this Court in the *California, Louisiana* and *Texas* cases.

It is useful to examine some of the legislative history of Public Law 31. For example, the Report of the Senate Committee which recommended the passage of what became Public Law 31, set forth its purpose quite clearly. After setting forth the holding of this Court in *Pollard, Lessee* v. *Hagan,* 3 How. 212 (1845), (without indicating that that decision related only to inland waters), it then indicated that the rule in this case had been the law applied by this Court prior to the decision in the California case. It then stated:

> "The purpose of this legislation is to write the law for the future as the Supreme Court believed it to be in the past—that the States shall own and have proprietary use of all lands under navigable waters within their territorial jurisdiction, whether inland or seaward subject only to the governmental powers delegated to the United States by the Constitution."[26]

The comments on the floor of the Senate by the chief proponents of the bill were to the same effect. The late Senator Taft, the majority leader at the time, was characteristically frank and direct:

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[26] Report No. 133 of Senate Committee on Interior and Insular Affairs to Accompany S. J. Res. 13, 83d Cong., 1st Sess., March 27, 1953, page 8.

"(I)t seemed perfectly clear to me at all times that the States were the real owners of these lands, and that the Supreme Court opinions were clearly wrong." (99 Cong. Rec. 4134.)

Senator Holland was equally clear as to the purpose of the bill:

"This decision (i.e. *California*) has resulted in chaos and complete instability, and as a matter of sound public policy must be corrected. This is the only place where it can be properly corrected." (parenthesis supplied.) (Ibid. at 2863.)

Senator Daniel of Texas, one of the chief proponents of the bill, appeared to consider the Congress as a tribunal to which he could appeal rulings of the Supreme Court, not only on substance, but on procedure as well.

"That is the *argument* which is made by the Supreme Court of the United States, and the Senator is agreeing with it, if he wishes to give weight to the equal-footing clause, instead of giving weight to the guarantees made by the Congress of the United States that Texas was to keep all lands within its limits." (emphasis added.) (Ibid. at 2938.)

"This was the first time in the history of the Supreme Court that it refused to hear evidence offered by a State in a contested lawsuit. It was the first time in the history of the Supreme Court that it refused to interpret or apply a solemn contract between the United States and another government." (Ibid.)

"Under these circumstances I have never accepted this Court decision (*i.e., United States* v. *Texas*) as final. I have felt it my duty to present the matter to the Congress, because the Congress made the agreement with Texas and it has the power to

keep that agreement by restoring our property." (parenthesis supplied.) (Ibid. at 2939.)

Alabama recognizes, of course, that Congress has broad constitutional powers to dispose of public property rights. Alabama realizes that congressional discretion is wide, and that legislative motive and wisdom are not, ordinarily, proper fields for judicial inquiry. Alabama does contend, however, that the power of Congress under the "property" clause is not boundless; that Congress holds public property in trust for all the people of the country, and hence in trust for the citizens of Alabama; that all dispositions of public property must conform to some demonstrable national interest; that Public Law 31 makes no pretense of being in the national interest, but rather, according to its legislative sponsors, is an attempt to benefit the defendant states as such.[27]

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[27] The picture given by an analysis of the legislative history of Public Law 31 is supported by the public context in which this legislation was considered. This Court can take notice of the reaction in the various state capitals affected to the decisions of this Court in the California, Louisiana and Texas cases, the widespread political pledges which were made to obtain a nullification of this Court's decision in those cases, and the circulation of a carefully prepared "tabulation", purporting to establish that a total of forty-eight Justices of this Court had voted to support the claims of California, Louisiana and Texas but that only a total of six had voted against those claims. 99 Cong. Rec. 2862-3. The remarks of Mr. Justice Frankfurter in his dissenting opinion in United States v. Kahriger, 345 U.S. 22, 38-39 (1953) are apt here:

> "What is relevant to judgment here is that, even if the history of this legislation as it went through Congress did not give one the libretto to the song, the context of the circumstances which brought forth this enactment—sensationally exploited disclosures regarding gambling in big cities and small,

But this Court held that these submerged lands and resources did not belong to defendants California, Texas and Louisiana, and that the Federal Government had paramount rights and dominion over them. Their disposition is not a matter concerning these states alone. All states are equally interested.

The courts, under our system of government, are arbiters of property rights, and this Court decided that the lands and resources were in the Federal domain, and not owned by defendants California, Texas and Louisiana. When enacting Public Law 31, Congress asked the sole question—Was the Supreme Court correctly applying the Constitution when it decided against California, Texas and Louisiana. But, it is submitted, the question which, under the Constitution, Congress must consider and answer is—is action which gives immensely valuable submerged lands and resources to the four defendant states—states which, according to the highest Court in the land, have never owned them—action which it should take as trustee for the whole nation? The inevitable negative answer to this latter question must invalidate Public Law 31 as a congressional violation of its public trust.

Congress has from time to time granted public lands to states and individuals for various purposes. Sometimes the grants were free; sometimes the consideration was small. But always there was a demonstrable public purpose behind the legislative action.

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the relation of this gambling to corrupt politics, the impatient public response to these disclosures, the feeling of ineptitude or paralysis on the part of local law-enforcing agencies—emphatically supports what was revealed on the floor of Congress, namely, that what was formally a means of raising revenue for the Federal Government was essentially an effort to check if not to stamp out professional gambling."

Land grants to schools were to further the education of our people, and these grants were spread throughout the country. Grants to railroads were for the purpose of developing the western area of the country—"to build new lines of road, not only between centers of trade, but far out into unsettled portions of the country where the operation of a railroad can prove a profitable business only after settlers have developed the resources of the country."[28] The development of the West has clearly enhanced the welfare of the whole nation. Similarly, the Homestead Acts,[29] the Timber and Stone Acts,[30] the Desert Land Act,[31] the Carey Act,[32] were all part of a legislative design to reward settlement, residence and land improvement in the undeveloped West. The national dividend from this national investment has been immense.

The Swamp Land Acts[33] were legislative declarations of policy that the states should be aided in reclaiming swamp and overflowed lands, unfit for cultivation in their natural state.[34]

The Federal Government granted land to states for internal improvements such as canals, rivers, and roads. The purpose was not to benefit the states con-

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[28] 2 Elliott on Railroads, 3rd Ed., Sec. 965, p. 376 (1921).

[29] Rev. Stat. Sec. 2289 et seqs, 43 U.S.C.A., Secs. 161, et seq.

[30] 20 Stat. 89, 43 U.S.C.A., Secs. 311, et seq.

[31] 19 Stat. 377, 43 U.S.C.A., Secs. 321, et seq.

[32] 28 Stat. 422, 43 U.S.C.A., Secs. 641, et seq.

[33] Rev. Stat. 2479, 43 U.S.C.A., Sec. 982.

[34] See Leovy v. United States, 177 U.S. 621, 636 (1900): "(T)he public health is deeply concerned in the reclamation of swamp and overflowed lands."

cerned, but to further nationwide travel and commerce.[28]

Thus, it is submitted that these examples of congressional grants of Federal property to states or individuals have foundations in demonstrable national purpose and interest. They contrast sharply with the gift of lands and resources to the defendant states contained in Public Law 31—a bare donation with no purpose other than the benefit of the states concerned. Such legislation is not consonant with the constitutional requirement that public property be held in trust for the benefit of all the people. Therefore, it must fall.

III

PUBLIC LAW 31 IS INVALID AS DENYING THE STATE OF ALABAMA RIGHTS GUARANTEED IT BY ITS ADMISSION TO THE UNION ON AN EQUAL FOOTING WITH THE OTHER STATES.

The arguments advanced in this section of the brief fall into two categories. The first is composed of arguments directed to the bill as it applies to the area within three miles from the low water mark of the four defendant states. The second are arguments directed to the bill as it is to be applied in the high seas, that is in the area from three to nine miles off the coasts of Texas, Louisiana and Florida.

The State of Alabama was admitted to the Union in 1819 pursuant to an Act of Congress which provided

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[28] See United States v. Michigan, 190 U.S. 379, 399 (1903): "(T)he purpose of the United States in granting the land . . . was not for the benefit of the State of Michigan, and the State did not receive any beneficial interest in such lands."

that the State of Alabama should be admitted into the Union "upon the same footing with the original states, in all respects whatever". 3 Stat. 489. The defendants, the State of California, the State of Louisiana, the State of Texas and the State of Florida were also admitted to the Union under Acts of Congress which contained similar provisions.[38] When the State of Alabama and the States of California, Louisiana, Texas and Florida came into the Union in this manner on an equal basis with the original states, they also came into the Union on an equal basis with each other.

The admission of the State of Alabama and the defendant states into the Union on an equal basis with each other is no mere expression of grace by the Congress which is subject to change by a later Congress. It has the dignity of a constitutional bond between the states. Indeed, the opinions of this Court show that the provisions of these Acts that admission should be on an equal footing are required by the Constitution itself.

This Court has previously considered the power granted by Article IV, Section 3 of the Constitution which provides that "new States may be admitted by the Congress into this Union". It has held that "this Union" referred to in this provision, "is a union of States, equal in power, dignity and authority". *Coyle* v. *Smith*, 221 U.S. 559, 567 (1911); see also *Withers* v. *Buckley*, 20 How. 84, 93 (1857). It has consequently held that:

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[38] California was admitted to the Union by an Act of Congress of September 9, 1850, c. 50 (9 Stat. 452); Louisiana by an Act of Congress of April 8, 1812, c. 50 (2 Stat. 701); Texas by a Joint Resolution of Congress of March 11, 1845, No. 8 (5 Stat. 797); and Florida by an Act of Congress of March 3, 1845, c. 48 (5 Stat. 742).

"(T)he power given to Congress by Sec. 3 of Article IV of the Constitution to admit new States relates only to such States as are equal to each other 'in power, dignity and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself.'" *Skiriotes* v. *Florida*, 313 U.S. 69, 77 (1941).

When the various states were admitted to the Union, this provision for equal footing became part of the indissoluble relationship which each state assumed toward the national government and the other states. The nature of this relationship has been described by this Court in *Texas* v. *White*, 7 Wall. 700, 726 (1868):

"When, therefore, Texas became one of the United States, she entered into an indissoluble relation. All of the obligations of perpetual Union, and all the guaranties of republican government in the Union, attached at once to the State. The Act which consummated her admission into the Union was something more than a compact; it was the incorporation of a new member into the political body. And it was final. The union between Texas and the other States was as complete, as perpetual, and as indissoluble as the union between the original States."

The State of Alabama and the defendant states therefore exist as members of a constitutional union, and, under the organic law of this union, they are members on an equal footing with one another. This is a relationship which is beyond the power of Congress to change; and is unaffected by any historic claims which may have existed at the time any partic-

ular state came into the Union."[37] Compare *Pollard's Lessee* v. *Hagan*, 3 How. 212 (1845), with *United States* v. *Texas*, 339 U.S. 707 (1950).

It is important to examine the "equal footing" clause in order to determine what sort of things are included within it. The content of the "equal footing" clause has recently been exhaustively analyzed by this Court in *United States* v. *Texas*, 339 U.S. 707, 716-720 (1950). This Court there pointed out that the "equal footing" clause controlled those property rights which were considered to be attributes of sovereignty. Thus, the Court concluded that under the "equal footing" clause each state had equal property rights in the shore and subsoil of inland navigable waters within its boundaries, subject, of course, to the commerce and navigation powers of the Federal Government. See 339 U.S. at 716. This rule, in fact, was fully articulated in *Pollard's Lessee* v. *Hagan*, 3 How. 212 (1845), in which the Court held that, under the "equal footing" clause, Alabama obtained the title to the lands underlying Mobile Bay, and indicated that no compact entered into by Alabama at the time of its entrance into the Union could change these rights.

Similarly, in *United States* v. *Oregon*, 295 U.S. 1, 14 (1935) this Court stated as follows:

> "Dominion over navigable waters and property in the soil under them are so identified with the sovereign power of government that a presumption against their separation from sovereignty must be indulged, in construing either grants by the sovereign of the lands to be held in private

[37] Of course, as pointed out below, pp. 68-72, Alabama denies the validity of any "historic claims" to preferential treatment on behalf of the defendant states.

ownership or transfer of sovereignty itself. See *Massachusetts* v. *New York*, 271 U.S. 65, 89. For that reason, upon the admission of a State to the Union, the title of the United States to lands underlying navigable waters within the States passes to it, as incident to the transfer to the State of local sovereignty, and is subject only to the paramount power of the United States to control such waters for purposes of navigation in interstate and foreign commerce."

Examination of Public Law 31 in the light of these pronouncements will show that the action proposed by the defendants will, unless restrained by this Court, deny equal footing to Alabama in two important respects.

The defendant states, under color of Public Law 31, are attempting to exercise property rights over the subsoil and the natural resources beneath the waters seaward of the low tide mark off their coasts. This Court in *United States* v. *Texas*, 339 U.S. 707, 719 (1950) held that such property interests were "so subordinated to the rights of sovereignty as to follow sovereignty." Because the sovereign attributes of the other states of the Union did not include property rights in the "marginal sea" area, this Court in the *Texas* case held that no such property rights were in Texas. This Court concluded (339 U.S. 719-20):

> "The 'equal footing' clause prevents extension of the sovereignty of a State into a domain of political and sovereign power of the United States from which the other States have been excluded, just as it prevents a contraction of sovereignty (*Pollard's Lessee* v. *Hagan, supra*) which would produce inequality among the States. For equality of States means that they are not 'less or greater, or differ-

ent in dignity or power.' See *Coyle* v. *Smith*, 221 U.S. 359, 566."

Thus, defendants, under color of Public Law 31, by asserting the property interests in the resources of the marginal sea off their shores, are attempting to extend their sovereignty into these areas. This action, unless restrained by this Court, will constitute an assumption of superior sovereignty vis-a-vis Alabama. If defendants succeed in their attempt to assert property interests in these submerged lands off their shores, advantages which will accrue to the defendants will accrue as a result of superior sovereignty of these defendants, which denies equal footing to Alabama in this important respect. An Act of Congress, not an accident of geology, accomplishes this end: For this Court in the *California*, *Louisiana* and *Texas* cases held that these lands and their resources did not accrue to the defendant states within the measure of their sovereignty from the date of their admission to the Union and prior to the passage of Public Law 31.

Nor can it be argued that since Alabama has been granted sovereignty for three geographic miles from its low water mark into the Gulf of Mexico, Alabama's sovereignty has been increased to an equivalent degree. Such an argument ignores facts which were apparent to Congress. Oil, sulphur, and natural gas deposits are known to exist in large quantities *only* in the submerged land areas off the coasts of defendant states particularly defendants California, Texas and Louisiana. So far as is known, no such deposits exist off the shores of the other coastal states, including Alabama. Indeed, this Court in *United States* v. *California* noted that the controversy there really involved oil. The case at bar is an extension of the same controversy.

It is submitted that Congress may not, consistently with the "equal footing" clause, increase the sovereignty of defendants so as to bring many billion dollars worth of natural resources within their orbit, and increase the sovereignty of Alabama and the other coastal states to an unknown, highly speculative, and relatively worthless degree. Actions attempted by defendants, under color of this legislation, relegate Alabama to a position of unequal sovereignty—inconsistent with the guarantees of the Constitution. Any appearance that Public Law 31 has an equal effect on all the coastal states must vanish when the facts concerning the nature of the lands and resources off their shores are known. The "equal footing" clause guarantees real and not illusory equality.[88]

In another particular, however, action proposed to be taken under color of Public Law 31 involves a most flagrant attempt to deny Alabama the equal sovereignty, dignity and power which are guaranteed to it by the "equal footing" clause. As set forth in the Complaint, the States of Texas, Louisiana and Florida, acting under color of Section 2(b) of Public Law 31, are attempting to extend their territorial boundaries at least nine nautical miles into the Gulf of Mexico from the mean low water mark on their coasts or the line marking the seaward limit of inland waters. Even assuming that these three states can make such a claim consistently with the terms of Public Law 31, it must

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[88] In other contexts, particularly in dealing with questions arising under the Fourteenth and Fifteenth Amendments, the Court has looked through legal forms to satisfy itself whether real equality of treatment existed. See, e.g. Sweatt v. Painter, 339 U.S. 629 (1950); Smith v. Allwright, 321 U.S. 649 (1944); Terry v. Adams, 345 U.S. 461 (1953).

follow that Public Law 31 is unconstitutional, as being contrary to the constitutionally guaranteed terms by which Alabama and these three defendant states were incorporated in the Union.

Width of the belt of territorial waters lying seaward of the ordinary low water mark or the line marking the seaward limit of inland waters involves political rights which are inherent attributes of sovereignty. While the interests of a state in this belt have not been sufficient to justify the assertion by a state of property interests in the resources of the water and the subsoil, the state has been held to have sovereignty in this belt which would justify the application of its police power. *Manchester* v. *Massachusetts*, 139 U.S. 240 (1891).[39] Moreover, the interests of a state in the maritime belt off its shores have been held adequate to justify bringing a boundary dispute in this Court against a state which made inconsistent claims to a portion of the same belt. *Louisiana* v. *Mississippi*, 202 U.S. 1 (1906).

When Alabama was admitted to the Union in 1819, the position of the Government of the United States was that the maritime belt off the shores of the United States was to be three nautical miles in width. This position had been taken by the first Secretary of State, Thomas Jefferson, in 1793. The position originally taken by Jefferson left open the choice that the United States might at some later date wish to extend its boundaries. But as the nineteenth century progressed, the United States became more firmly committed as the

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[39] The exercise of the state police power in this area is, of course, subject to the normal constitutional limitations. See Toomer v. Witsell, 334 U.S. 385 (1948).

exponent of the rule of international law that three nautical miles was the maximum width which any country might properly assert for its maritime belt. See *United States* v. *California*, 332 U.S. 19, 31-34 (1947); Hughes, 18 Am. J. Int'l L. 229, 230.

This rule has been recognized by this Court. In *Cunard S.S. Co.* v. *Mellon*, 262 U.S. 100, 122 (1923) this Court stated the rule in the following terms:

> "It now is settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays, and other enclosed arms of the sea along its coast, and a marginal belt of the sea extending from the coast line outward a marine league, or 3 geographic miles."

As has already been pointed out by this Court in the *California* case (332 U.S. at 31-34) the United States took this position as part of its conduct of foreign relations. These positions were, therefore, binding on all the coastal states as to the width of the maritime belt off their shores which was within the territorial boundaries of the United States.

By joining the Union, Alabama became bound by the actions of the United States in the conduct of its foreign relations, and as a result, became bound by the rule, supported by the United States, that three nautical miles were the maximum limit of the width of the maritime belt which any nation, including the United States, might claim as part of its territorial boundaries. As a member of the Union, Alabama therefore has made no claims to boundaries including a maritime belt of more than three nautical miles in

width.[48] The defendants Texas, Louisiana and Florida, however, under color of Public Law 31 are asserting territorial jurisdiction over a maritime belt nine nautical miles in width. Moreover, they are asserting exclusive property rights over all the natural resources found within this maritime belt. Furthermore, the individual defendants are acquiescing in, and purporting to recognize the validity of, these claims.

Here the Court is presented with a situation in which there is not even a semblance of formal equality. Nor is this inequality a result of differences in area, location, geology or latitude. All four states border on the same Gulf of Mexico, and, indeed, are neighboring states. Yet the defendants, under color of Public Law 31, claim sovereignty, and the immensely valuable property interests incident thereto, in a maritime belt extending nine miles into the Gulf, while the complainant State of Alabama is entitled to sovereignty in a belt extending only three miles into the Gulf. It is difficult to conceive of a situation more precisely fitting the description of an "extension of the sovereignty of a State into a domain of political and sovereign power of the United States from which the other States have been excluded" the description given by this Court in the *Texas* case of a situation prohibited by the "equal footing" clause.

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[48] Under the traditional rule of measuring territorial waters, territorial belt is measured seaward along the ordinary low water mark on the coast of Alabama or from the seaward limit of inland waters. See Report of Special Master, United States v. California, No. 6 original, Oct. Term, 1952. This rule is restated in Section 2(c) of Public Law 31. In the case of Alabama therefore, the territorial belt of three miles is not only measured from its coastline, but also from the seaward limit of its inland waters.

There is another serious effect on Alabama and its citizens resulting from this status of inferior sovereignty. Prior to these attempted assertions of sovereignty under color of Public Law 31, Alabama's citizens enjoyed a non-exclusive privilege to fish or gather marine animal and plant life in waters of the Gulf of Mexico beyond the three mile belt off the shores of defendant states, unregulated and unmolested by these defendants. See *Toomer* v. *Witsell*, 334 U.S. 385 (1948); *Skiriotes* v. *Florida*, 313 U.S. 69 (1941). Within the three mile belt off these defendants' shores, Alabama citizens could fish, subject to regulation and licensing, but nevertheless protected by the Constitution against discriminatory treatment because of non-residence in these states. See *Toomer* v. *Witsell*, supra.

In *Toomer* v. *Witsell* this Court invalidated an attempt by South Carolina to impose a higher license fee on non-resident shrimpers for the privilege of shrimping in its waters than was imposed on South Carolina residents for the same privilege. Such action on the part of South Carolina was held to violate the privileges and immunities clause, Article IV, Section 2 and the commerce clause, Article I, Section 8 of the Constitution.

Attempted assertions of defendant states under color of Public Law 31 will, if not restrained by this Court, have two adverse effects upon Alabama citizens. First, these assertions will deprive them of their long standing rights and privileges to fish unmolested and unregulated on the high seas in the Gulf of Mexico beyond the three mile belt off the shores of Texas, Florida and Louisiana—and to do so without the payment of onerous excises. Second, these assertions may

place in jeopardy the right of Alabama fishermen to fish without discriminatory licensing and regulation within this three mile belt.

The facts set forth in Alabama's Complaint, however, show that none of the defendants are entitled to this special consideration even under the language of the statute.

Public Law 31 does not, by its terms, mention the defendants Texas, Louisiana, or Florida. The claim that Public Law 31 authorizes these states to extend their boundaries to include a maritime belt nine nautical miles in width is therefore based on a claim that the framers of Public Law 31 devised a test which would fit the situation of Texas, Louisiana and Florida, but no other state. If this is the case, as has already been shown, Public Law 31 is invalid as being contrary to the "equal footing" clause. In either event, of course, the relief from this Court would be the same.

Section 2(b) of Public Law 31 defines boundaries of the coastal states in the following manner:

> "The term 'boundaries' includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes *as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress,* or as extended or confirmed pursuant to section 4 hereof but in no event shall the term 'boundaries' or the term 'land beneath navigable waters' be interpreted as extending from the coast line *more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico.* (emphasis supplied.)

Section 4 of the Act provides a method by which states that have not heretofore claimed boundaries of three

nautical miles may do so. While it contains a provision that this shall be without prejudice to the claims of greater than three miles, it does not itself recognize any such claims, and so the claims of the defendants Texas, Louisiana and Florida to marginal seas of greater than three miles must be based on section 2(b). Under the language of this section, one of these three defendant states may claim a maritime belt of three marine leagues (nine nautical miles) into the Gulf (a) if it was entitled to such a belt at the time it became a member of the Union or (b) if Congress had approved such a claim prior to the enactment of Public Law 31 on May 22, 1953.

Alabama does not contest, in fact it alleges, that the defendant States of Texas, Louisiana and Florida are *now* claiming that their boundaries should extend at least nine nautical miles into the Gulf of Mexico. Texas, in fact, now claims that its boundaries should extend to the edge of the continental shelf;[42] Louisiana claims that its boundaries should extend twenty-seven nautical miles into the Gulf;[43] Florida has modestly limited herself merely to nine miles.[44]

As set forth in the Complaint, however, none of these three defendant states was entitled to a territorial belt of greater than three geographic miles when it

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[42] By an Act of May 16, 1941, the Texas Legislature purported to extend the territorial boundaries twenty-four miles further out in the Gulf of Mexico than the three mile limit. Laws of Texas, 47th Leg., p. 454) By an Act of May 23, 1947, the Texas Legislature purported to extend the boundaries of Texas to the outer edge of the continental shelf. Laws of Texas, 50th Leg., p. 451. See Vernon's Ann. Civ. Stat. Art. 5415a.

[43] 6 Dart. La. Gen. Stats. (1939), Secs. 9311.1-9311.4.

[44] Article I, Constitution of 1868.

joined the Union. Only one of them, Texas, had even made a claim of this character prior to the time it joined the Union, but this claim was not recognized by the United States. Similarly, as set forth in the Complaint, the Congress had not approved the claims of these three defendant states prior to May 22, 1953. The Congress has continually supported the position which the United States has championed in its conduct of foreign relations—that three nautical miles is the maximum permissible width of the belt of territorial waters. This position has been equally applicable to the Gulf of Mexico and the Atlantic and Pacific Oceans. In fact, some of the stoutest assertions of this position have arisen from controversies in the Gulf of Mexico, controversies with Mexico and Spain with respect to their claims of belts in excess of three miles in width off the coasts of Mexico and of Cuba.

The resolution of the issue as to whether the facts justify the claims of these three defendant states to a belt of territorial waters nine miles in width is, of course, an issue which requires factual proof. Alabama does not believe that these three defendant states, Texas, Louisiana and Florida, satisfy the criteria laid down by Public Law 31. Alabama has so alleged and Alabama is prepared to sustain this allegation with proof. At this point Alabama cites the exhaustive analysis of this country's support of the three mile limit made by this Court in the *California* case (332 U.S. 30-35) which supports its allegation.

The policy of the United States of supporting the three mile rule has not been one solely of the executive branch of the Government. It has also been expressed in treaties which have received the advice and consent of the Senate. Under the direction of former Secretary

of State Charles Evans Hughes, the United States entered into a series of treaties dealing with the problems raised by the smuggling of intoxicating liquor. Treaties of this kind were entered into with Great Britain,[45] Germany,[46] Panama,[47] The Netherlands,[48] Cuba[49] and Japan.[50] All of these treaties contained a provision that:

> "The High Contracting Parties declare that it is their firm intention to uphold the principle that three marine miles extending from the coastline outwards and measured from low-water mark constitute the proper limit of territorial waters."

In *Cook* v. *United States*, 288 U.S. 102 (1933), this Court indicated that it will not construe a statute as abrogating or modifying a treaty obligation if it can possibly avoid it. The present statute should be applied, therefore, in light of the fact that the extension of the territorial waters in excess of three miles is a violation of treaties to which this country is a party. It must be borne in mind that these treaties are quite recent expressions of policy; and they have been even more recently reaffirmed. The Treaty of Peace with Japan went into effect on April 28, 1952, under which, within one year, the various allied powers would notify Japan of those various prewar bilateral treaties which they wished to have continued in force or revived. On April 22, 1953, the United States gave to the

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[45] Treaty Series No. 685, 43 Stat. 1761.
[46] Treaty Series No. 694, 43 Stat. 1815.
[47] Treaty Series No. 707, 43 Stat. 1875.
[48] Treaty Series No. 712, 44 Stat. 2013.
[49] Treaty Series No. 738, 44 Stat. 2395.
[50] Treaty Series No. 817, 46 Stat. 2446.

Japanese Government a list of prewar bilateral treaties which were to be considered as "having been continued in force or revived 3 months after the date of this note, i.e., July 22, 1953." See The Department of State Bulletin, Vol. XXVIII, No. 725, May 18, 1953, p. 721. The Treaty with Japan under which the two countries agreed to support the three mile limit was one of the treaties included. Thus as recently as July 22, 1953, the United States has reassumed the obligation to support the three mile limit. The claims of Texas, Louisiana and Florida that the proper limit of territorial waters off their coasts is nine, not three miles, must be evaluated against this solemn commitment.

IV

Alabama may properly sue the individual defendants at bar

Alabama in this action is suing the following individuals:

George M. Humphrey, acting under color of authority as Secretary of the Treasury; Douglas McKay, acting under color of authority as Secretary of Interior; Robert B. Anderson, acting under color of authority as Secretary of the Navy; Ivy Baker Priest, acting under color of authority as Treasurer of the United States.

As pointed out elsewhere in this brief, Alabama has alleged that, unless restrained by this Court, these individual defendants, acting under color of authority of Public Law 31, will infringe the rights and interests of Alabama in the described fund of approximately $62,000,000 now held by them or under their control. Furthermore, as described earlier in this brief, these

individual defendants, acting under color of authority of Public Law 31, will acquiesce in unlawful assertions of the defendant states, also described earlier in this brief, all to the detriment of the interests and rights of Alabama.

It is perhaps unnecessary to point out that Alabama's suit is not one against the United States such as would run afoul of principles of sovereign immunity. This suit comes within that class of cases which allow an action against a public officer, either State or Federal, to enjoin him from seeking to enforce an unlawful or unconstitutional enactment to the detriment of the complainant. As stated by Mr. Justice Hughes in *Philadelphia Co.* v. *Stimson*, 223 U.S. 605, 620 (1912):

> "... in case of an injury threatened by his illegal action, the officer cannot claim immunity from injunction process. The principle has frequently been applied with respect to state officers seeking to enforce unconstitutional enactments. ... And it is equally applicable to a Federal officer acting in excess of his authority or under an authority not validly conferred."

As explained by this Court, the theory is that the conduct against which specific relief is sought is beyond the officers' powers, and, therefore, not the conduct of the sovereign. As stated by Chief Justice Vinson in *Larson* v. *Domestic and Foreign Corp.*, 337 U.S. 682, 690 (1949):

> "A second type of case is that in which the statute or order conferring power upon the officer to take action in the sovereign's name is claimed to be unconstitutional. ... Here, too, the conduct against which specific relief is sought is beyond the offi-

> cers' powers and is, therefore, not the conduct of the sovereign. . . . (T)he power has been conferred in form but the grant is lacking in substance because of its constitutional invalidity."[51]

Most recently this Court in *Georgia R. Co.* v. *Redwine*, 342 U.S. 299, 304 (1952), stated:

> "This Court has long held that a suit to restrain unconstitutional action threatened by an individual who is a state officer is not a suit against the State. These decisions were re-examined and reaffirmed in *Ex parte Young*, 209 U.S. 123 (1908), and have been consistently followed to the present day."

In the case at bar, as stated, Alabama seeks to enjoin the performance of acts by the individual defendants under color of authority of Public Law 31. Alabama contends that the authority purportedly conferred by Public Law 31 has been conferred in form but not in substance. This is because Public Law 31 violates the Constitution, as pointed out earlier in this brief, and, therefore, conduct under color of it is not conduct of the sovereign. The same is true, of course, of conduct not even authorized by its terms.

No further reason is needed to sustain the propriety of this suit against the individual defendants herein. However, it is noteworthy that no specific relief against these defendants is asked.[52]

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[51] For a complete collection of precedents in this Court to the same effect see Appendix to the dissenting opinion of Frankfurter, J., 337 U.S. 682, 731.

[52] But cf. Larson v. Domestic & Foreign Corp., 337 U.S. 682 (1949).

CONCLUSION

Wherefore, it is respectfully submitted that motion for leave to file this complaint be granted and that, upon hearing, the relief prayed for in the complaint be granted.

Respectfully submitted,

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APPENDIX A

PUBLIC LAW 31, 83D CONGRESS, 1ST SESSION, C. 65

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Submerged Lands Act".

TITLE I

DEFINITION

SEC. 2. When used in this Act—

(a) The term "lands beneath navigable waters" means—

(1) all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and

(3) all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as hereinabove defined;

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

(d) The terms "grantees" and "lessees" include (without limiting the generality thereof) all political subdivisions, municipalities, public and private corporations, and other persons holding grants or leases from a State, or from its predecessor sovereign if legally validated, to lands beneath navigable waters if such grants or leases were issued in accordance with the constitution, statutes, and decisions of the courts of the State in which such lands are situated, or of its predecessor sovereign: *Provided, however*, That nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests other than are described herein and in their respective grants from the State, or its predecessor sovereign;

(e) The term "natural resources" includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power, or the use of water for the production of power;

(f) The term "lands beneath navigable waters" does not include the beds of streams in lands now or heretofore constituting a part of the public lands of the United States if such streams were not meandered in connection with the public survey of such lands under the laws of the United States and if the title to the beds of such streams was lawfully patented or conveyed by the United States or any State to any person;

(g) The term "State" means any State of the Union;

(h) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

TITLE II

LANDS BENEATH NAVIGABLE WATERS WITHIN STATE BOUNDARIES

SEC. 3. RIGHTS OF THE STATES.—

(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the re-

spective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

(b) (1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources; (2) the United States hereby releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters; and (3) the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States shall pay to the respective States or their grantees issuing leases covering such lands or natural resources all moneys paid thereunder to the Secretary of the Interior or to the Secretary of the Navy or to the Treasurer of the United States and subject to the control of any of them or to the control of the United States on the effective date of this Act, except that portion of such moneys which (1) is required to be returned to a lessee; or (2) is deductible as provided by stipulation or agreement between the United States and any of said States;

(c) The rights, powers, and titles hereby recognized, confirmed, established, and vested in and assigned to the respective States and their grantees are subject to each lease executed by a State, or its grantee, which was in force and effect on June 5, 1950, in accordance with its terms and provisions and the laws of the State issuing, or whose grantee issued, such lease, and such rights, powers, and titles are further subject to the rights herein now granted to any person holding any such lease to continue to maintain the lease, and to conduct operations thereunder, in accordance with its provisions, for the full term thereof, and any extensions, renewals, or replacements authorized

therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued such lease: *Provided, however*, That, if oil or gas was not being produced from such lease on and before December 11, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued, such lease: *Provided, however*, That within ninety days from the effective date hereof (i) the lessee shall pay to the State or its grantee issuing such lease all rents, royalties, and other sums payable between June 5, 1950, and the effective date hereof, under such lease and the laws of the State issuing or whose grantee issued such lease, except such rents, royalties, and other sums as have been paid to the State, its grantee, the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States and not refunded to the lessee; and (ii) the lessee shall file with the Secretary of the Interior or the Secretary of the Navy and with the State issuing or whose grantee issued such lease, instruments consenting to the payment by the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States to the State or its grantee issuing the lease, of all rents, royalties, and other payments under the control of the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States or the United States which have been paid, under the lease, except such rentals, royalties, and other payments as have also been paid by the lessee to the State or its grantee;

(d) Nothing in this Act shall affect the use, development, improvement, or control by or under the constitutional authority of the United States of said lands and waters for the purposes of navigation or flood control or the production of power, or be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control, or the production of power;

(e) Nothing in this Act shall be construed as affecting or intended to affect or in any way interfere with or modify

the laws of the States which lie wholly or in part westward of the ninety-eighth meridian, relating to the ownership and control of ground and surface waters; and the control, appropriation, use, and distribution of such waters shall continue to be in accordance with the laws of such States.

SEC. 4. SEAWARD BOUNDARIES.—The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

SEC. 5. EXCEPTIONS FROM OPERATION OF SECTION 3 OF THIS ACT.—There is excepted from the operation of section 3 of this Act—

(a) all tracts or parcels or land together with all accretions thereto, resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the law of the State or of the United States, and all lands which the United States lawfully holds under the law of the State; all lands expressly retained by or ceded to the United States when the State entered the Union (otherwise than by a general retention or cession of lands underlying the marginal sea); all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary

capacity; all lands filled in, built up, or otherwise reclaimed by the United States for its own use; and any rights the United States has in lands presently and actually occupied by the United States under claim of right;

(b) such lands beneath navigable waters held, or any interest in which is held by the United States for the benefit of any tribe, band, or group of Indians or for individual Indians; and

(c) all structures and improvements constructed by the United States in the exercise of its navigational servitude.

SEC. 6. POWERS RETAINED BY THE UNITED STATES.—(a) The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 3 of this Act.

(b) In time of war or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of the said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefor.

SEC. 7. Nothing in this Act shall be deemed to amend, modify, or repeal the Acts of July 26, 1866 (14 Stat. 251), July 9, 1870 (16 Stat. 217), March 3, 1877 (19 Stat. 377), June 17, 1902 (32 Stat. 388), and December 22, 1944 (58 Stat. 887), and Acts amendatory thereof or supplementary thereto.

SEC. 8. Nothing contained in this Act shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this Act and such rights, if any, shall be governed by the law in effect at the time they may have been acquired: *Provided*,

however, That nothing contained in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact or in law applies to the lands subject to this Act, or authorizes or compels the granting of such rights in such lands, and that the determination of the applicability or effect of such law shall be unaffected by anything contained in this Act.

SEC. 9. Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed.

SEC. 10. Executive Order Numbered 10426, dated January 16, 1953, entitled "Setting Aside Submerged Lands of the Continental Shelf as a Naval Petroleum Reserve", is hereby revoked insofar as it applies to any lands beneath navigable waters as defined in section 2 hereof.

SEC. 11. SEPARABILITY.—If any provision of this Act, or any section, subsection, sentence, clause, phrase or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase or individual word to other persons and circumstances shall not be affected thereby; without limiting the generality of the foregoing, if subsection 3 (a) 1, 3 (a) 2, 3 (b) 1, 3 (b) 2, 3 (b) 3, or 3 (c) or any provision of any of those subsections is held invalid, such subsection or provision shall be held separable and the remaining subsections and provisions shall not be affected thereby.

APPENDIX B

RELEVANT PORTIONS OF THE ACTS OF CONGRESS ADMITTING THE STATES OF ALABAMA, LOUISIANA, FLORIDA, TEXAS AND CALIFORNIA TO THE UNION

Alabama (Act of March 2, 1819, c. 47, 3 Stat. 489):

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress

assembled, That the inhabitants of the territory of Alabama be, and they are hereby, authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper; and that the said territory, when formed into a state, shall be admitted into the union, upon the same footing with the original states, in all respects whatever.

Louisiana (Act of April 8, 1812, c. 50, 2 Stat. 701):

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the said state shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever, by the name and title of the state of Louisiana:

Florida (Act of March 3, 1845, c. 48, 5 Stat. 742):

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that the States of Iowa and Florida be, and the same are hereby, declared to be States of the United States of America, and are hereby admitted into the Union on equal footing with the original States, in all respects whatsoever.

Texas (Joint Resolution No. 8 of March 1, 1845, 5 Stat. 797):

Be it resolved, That a State, to be formed out of the present Republic of Texas, with suitable extent and boundaries, and with two representatives in Congress, until the next apportionment of representation, shall be admitted into the Union, by virtue of this act, on an equal footing with the existing States, as soon as the terms and conditions of such admission, and the cession of the remaining Texian territory to the United States shall be agreed upon by the Governments of Texas and the United States:

California (Act of September 9, 1850, c. 50, 9 Stat. 452):

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress

assembled, That the State of California shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

APPENDIX C

LEGISLATIVE ACTS SETTING FORTH BOUNDARY CLAIMS OF TEXAS AND LOUISIANA AND CONSTITUTIONAL PROVISION SETTING FORTH BOUNDARY CLAIM OF FLORIDA

TEXAS

Act of May 16, 1941, L. Texas, 47th Leg., p. 454.

Boundary Statute—*General and Special Laws of Texas*, 47th Legislature, Regular Session, 1941, page 454:

Be it enacted by the Legislature of the State of Texas:

"Section 1. That the gulfward boundary of the State of Texas is hereby fixed and declared to be a line located in the Gulf of Mexico parallel to the three (3) mile limit, as determined according to said ancient principles of international law, which gulfward boundary is located twenty-four (24) marine miles further out in the Gulf of Mexico than the said three (3) mile limit.

"Section 2. That, subject to the right of the government of the United States to regulate foreign and interstate commerce under Section 8 of Article 1 of the Constitution of the United States, and to the power of the government of the United States over cases of admiralty and maritime jurisdiction under Section 2 of Article 3 of the Constitution of the United States, the State of Texas has full sovereignty over all the waters of the Gulf of Mexico and of the arms of the Gulf of Mexico within the boundaries of Texas, as herein fixed, and over the beds and shores of the Gulf of Mexico and all arms of the said Gulf within the boundaries of Texas, as herein fixed.

"Sec. 3. That the State of Texas owns, in full and complete ownership, the waters of the Gulf of Mexico and of the arms of the said Gulf, and the beds and shores of the Gulf of Mexico, and the arms of the Gulf of Mexico, including all lands that are covered by the waters of the said Gulf and its arms, either at low tide or high tide, within

the boundaries of Texas, as herein fixed; and that all of said lands are set apart and granted to the Permanent Public Free School Fund of the State, and shall be held for the benefit of the Public Free School Fund of this State according to the provisions of law governing the same.

"Sec. 4. That this Act shall never be construed as containing a relinquishment by the State of Texas of any dominion sovereignty, territory, property or rights that the State of Texas already had before the passage of this Act.

"Sec. 5. The fact that the land included within the boundaries hereinabove fixed belongs to the Permanent Public Free School Fund of this State, and that the same is believed to be oil bearing land, and that the development of same in accordance with the provisions of law governing the sale or lease of minerals belonging to said Permanent Free School Fund is a major duty of the Legislature, and requires prompt and immediate attention, creates an emergency and an imperative public necessity that the Constitutional Rule requiring all bills to be read on three several days in each House be, and the same is hereby suspended, and that this Act take effect and be in full force from and after its passage, and it is so enacted."

Approved May 16, 1941.

Act of May 23, 1947, L. Texas, 50th Leg., p. 451.

"Be it enacted by the Legislature of the State of Texas:

Section 1. That Section 1 of Senate Bill No. 130, Chapter 286, Act of the 47th Legislature, be and the same is hereby amended so as to hereafter read as follows:

'Section 1. The Gulfward boundary of the State of Texas is hereby fixed and declared to be a line beginning in the Gulf of Mexico at the mouth of the Sabine River; thence on a grid bearing S. 35 degrees 55 minutes and 22 seconds E. to the farthermost edge of the continental shelf from the Gulf Shore line; thence in a Westerly and Southerly direction with the edge of the continental shelf to a point opposite the mouth of the Rio Grande River; thence to the mouth of the Rio Grande River.'

Sec. 2. The fact that the land included within the boundaries hereinabove fixed belongs to the Permanent Public Free School Fund of this state, and the state has never by

statute embraced all of same within the boundary of Texas, and that the same is believed to be oil bearing land, and that the development of same in accordance with the provisions of law governing the sale or lease of minerals belonging to said Permanent Free School Fund is a major duty of the Legislature, and requires prompt and immediate attention, creates an emergency and an imperative public necessity that the Constitutional Rule requiring all bills to be read on three several days in each House be, and the same is hereby suspended, and that this Act take effect and be in full force from and after its passage, and it is so enacted."

Approved May 23, 1947.

LOUISIANA

Louisiana Revised Statutes 1950, Title 49, Sections 1 and 2:

"§ 1. Gulfward boundary

The gulfward boundary of the state is a line located in the Gulf of Mexico parallel to the three-mile limit as determined according to international law, and is located twenty-four marine miles further out in the Gulf than the three-mile limit.

"§ 2. Sovereignty over waters within boundaries

Subject to the right of the government of the United States to regulate foreign and interstate commerce under Section 8 of Article 1 of the Constitution of the United States, and to the power of the government of the United States over cases of admiralty and maritime jurisdiction under Section 2 of Article 3 of the Constitution of the United States, the State of Louisiana has full sovereignty over all of the waters of the Gulf of Mexico and of the arms of the Gulf of Mexico within the boundaries of Louisiana, and over the beds and shores of the Gulf and all arms of the Gulf within the boundaries of Louisiana."

FLORIDA

Constitution of State of Florida 1868—Article I

"State boundaries.—The boundaries of the State of Florida shall be as follows. Commencing at the mouth of the

river Perdido; from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama, and the thirty-first degree of north latitude; thence due east to the Chattahoochee river; thence down the middle of said river to its confluence with the Flint river; thence straight to the head of the St. Mary's river; thence down the middle of said river to the Atlantic ocean; then southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to, and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land to a point west of the mouth of the Perdido river: thence to the place of beginning."